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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

F.A.O. No 750 of 2007 (O&M).
Date of Decision : March 15, 2007

Smt. Sarparveen Kaur and another

... Appellants

Versus

Punjab Agro Industries Corporation Limited
and another.

.. Respondents

CORAM : Hon`ble Mr. Justice Pritam Pal.

Present : Shri Sandeep Bhardwaj, Advocate,
for the appellants.

PRITAM PAL , J.

This appeal by the appellants, under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), is directed against judgment dated 20.7.2006, (Annexure A/1) rendered by learned Additional District Judge, Chandigarh, in Arbitration Case No. 54 of 2002 in respect of an award dated 26.9.2002 (Annexure A/2) made by Shri P.K.Verma, Financial Commissioner (Development) and Secretary Agriculture, Government of Punjab, (the Sole Arbitrator). By the impugned judgment, the objections under Section 34 of the Act filed by the appellants, before the learned Additional District Judge, Chandigarh were dismissed with costs.

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Without going into the details, suffice it to say that the appellants and respondent no.1, Punjab Agro Industries Corporation Ltd. (hereinafter referred to as "the respondent-Corporation") had entered into a Financial Collaboration Agreement (for short, "the agreement") for setting-up a new unit for the manufacture of processed honey and allied products. This agreement was preceded by a Memorandum of Understanding (for short, "the Memorandum"), (Annexure A/3) between the two sides on 21.4.1989. Under clause (7) of the Memorandum, it was clearly provided that any difference and disputes between the parties, arising out of the aforesaid Memorandum, will be endeavored to be resolved by the parties "by mutual negotiations and failing that, the matter will be referred to the person, for the time being functioning as Secretary to Government of Punjab, Agriculture Department, whose decision will be binding upon both the parties". Further it has also been agreed upon between the parties that there will be no objection to such arbitration, that the person concerned is or has been or may become a Director or Chairman of the Corporation, in his official capacity.

As per clause 26 of the agreement dated 2.9.1992, the appellants-collaborator were bound to purchase the equity share holding of the Corporation in the Company after a period of five years of commencement of commercial production by the Company and to pay money back to the Corporation with simple interest at the rate prevalent. In that behalf letters dated 31.12.1999 and 9.3.2000 were also sent by the Corporation. Ultimately, a reference was made to the sole Arbitrator, i.e. Financial Commissioner Development and Secretary, Agriculture, Government of Punjab, Chandigarh, (respondent No.2), who after hearing

learned counsel for the parties, passed the impugned award on 26.9.2002. Against the said award, objections were filed by the appellants under Section 34 of the Act, which were ultimately dismissed vide impugned judgment.

Now, the only contention of learned counsel for the appellants is that in fact, no opportunity of being heard was given to the appellants by the sole Arbitrator. At the same time, it was also submitted that earlier Shri C.L.Bains, in the capacity of sole Arbitrator, was dealing with the matter and thereafter, on his transfer, Shri N.S.Rattan and then Shri P.K.Verma, continued to conduct the proceedings as Arbitrator. In fact, the Arbitrator, Shri N.S.Rattan and P.K.Verma, could not have dealt-with the matter after the transfer of Shri C.L.Bains, from the post of Secretary, Agriculture, Punjab.

Both the points of arguments, raised by learned counsel for the appellants, failed to carry any conviction with this Court inasmuch as, it is apparent from the record that the appellants/Objectors had made requests for adjournment, time and again, during the arbitration proceedings, on one pretext or the other. It was on 10.5.2002 that the sole Arbitrator had finally made it clear to the appellants that last opportunity was being given to them to file their written arguments. It is further evident on the file that the matter before the Arbitrator was again adjourned to 3.7.2002, then to 26.7.2002 and finally to 1.8.2002, at the instance of the appellants. Faced with such a situation, it is not open to the appellants to say that no proper opportunity was given to them by the Arbitrator for pursing their case.

Now adverting to the second point of argument, it is a matter of common knowledge that the officers at the level of Secretary to State

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Government are transferred from one department to another. On the transfer of Shri C.L.Bains, who at one point of time, was Arbitrator, being Secretary, Agriculture, was replaced initially by Shri N.S.Rattan and then by Shri P.K.Verma and as such, they being successors in the office of the Secretary to Government, Agriculture Department, acted as Arbitrator. Moreover, it is no-where mentioned in the agreement, nor there was any intention of the parties, that even after Shri C.L.Bains was no longer on the same post, he would continue with the arbitration proceedings of this case as a Sole Arbitrator. Not only that, as provided under Section 15(4) of the Act, it was never agreed between the parties that order or rule of the Arbitral Tribunal, made prior to the replacement of an Arbitrator, would be invalid solely because there has been a change in the composition of the Arbitral Tribunal.

Thus, taking an over all view of the facts and circumstances, as discussed above, no interference is called for in the impugned judgment.

Dismissed *in limine.*

[PRITAM PAL]
JUDGE

March 15, 2007.
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